

9337

RECORDATION NO. .... Filed &amp; Recorded

APR 24 1978 -11 45 AM

April 24, 1978

INTERSTATE COMMERCE COMMISSION  
Interstate Commerce Commission  
Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and three counterparts of an Equipment Lease dated as of March 1, 1978.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

RECEIVED

APR 24 11 39 AM '78

CERTIFICATION UNIT

The names and addresses of the parties are:

Lessor: Connell Leasing Company,  
A Division of Connell Rice & Sugar Co., Inc.  
45 Cardinal Drive  
Westfield, New Jersey 07092

Lessee: Consumers Power Company  
212 West Michigan Avenue  
Jackson, Michigan 49201

The undersigned is the Lessee mentioned in the enclosed Equipment Lease and has knowledge of the matters set forth therein.

Please return the original and two copies of the Equipment Lease to Robert Nash, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

CONSUMERS POWER COMPANY

By

*[Signature]*  
Vice President

Enclosures

8-114A012

Date APR 24 1978

Fee \$ 50

ICC Washington, D. C.

APPROVED AS TO FORM

*[Signature]*  
CONSUMERS POWER COMPANY  
LEGAL DEPARTMENT

*CT. Kessler*  
*C. Quinlan*

DESCRIPTION OF EQUIPMENT

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Mark and Numbers (Both Inclusive)</u>
110	One hundred ton, 4,000 cubic foot high side steel Gondola Cars with swivel couplers	CPOX 1000 through CPOX 1109, both inclusive

# Interstate Commerce Commission

Washington, D.C. 20423

4/24/78

OFFICE OF THE SECRETARY

Robert Nash  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Sir:  
Dear

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **4/24/78** at **11:45am**  
**9337 & 9338**  
and assigned recordation number(s)

Sincerely yours,

H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

APR 12 1978

RECORDATION NO. 9337 Filed & Recorded

APR 24 1978 -11 42 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of March 1, 1978 .

BETWEEN

CONNELL LEASING COMPANY,  
A DIVISION OF CONNELL RICE & SUGAR CO., INC.

LESSOR

AND

CONSUMERS POWER COMPANY

LESSEE

(Consumers Power No. 78-1)  
(110 Rotary Dump Gondola Cars)

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Attachments to Equipment Lease:

Schedule A - Description of Gondola Cars  
Schedule B - Certificate of Acceptance Under Equipment Lease  
Schedule C - Schedule of Casualty Value

CONSUMERS POWER COMPANY

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of March 1, 1978 between CONNELL LEASING COMPANY, A DIVISION OF CONNELL RICE & SUGAR CO., INC., a New Jersey corporation (the "Lessor"), and CONSUMERS POWER COMPANY, a Michigan corporation (the "Lessee");

W I T N E S S E T H:

That for and in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned the parties hereby agree as follows:

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. The Lessor is acquiring certain equipment (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item") described in Schedule A attached hereto and made a part hereof and, upon delivery of each Item of Equipment by THRALL CAR MANUFACTURING COMPANY as manufacturer thereof (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth. The Lessor and the Lessee have entered into a Purchase Order Assignment dated as of March 1, 1978 (the "Purchase Order Assignment") setting forth the understanding and agreement of the Lessor and the Lessee as to the arrangements for payment by the Lessor of the cost of purchase of said Equipment.

1.2. Delivery and Acceptance of Items. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance in the form attached hereto as Schedule B (the "Certificate of Acceptance") with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date therefor set forth in Schedule A hereto.

1.3. Lessee's Satisfaction with Equipment; Conformance with Specifications and Requirements. The Lessee's execution and



delivery to the Lessor and the Manufacturer of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish that such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rentals for Equipment. The Lessee agrees to pay the Lessor, on the dates provided in Section 2.3 hereof, the following rentals for each Item of Equipment leased hereunder:

(a) Interim Rental. For each Item of Equipment, an amount per day (the "Interim Rental") equal to 0.00025 times 66.5% of the Purchase Price thereof (as defined in the Purchase Order Assignment and hereinafter referred to as the "Purchase Price") for the period, if any, from the Closing Date (as defined in the Purchase Order Assignment) for such Item to, but not including July 3, 1978 (the "Term Lease Commencement Date");

(b) Fixed Rental. For each Item of Equipment leased hereunder, thirty (30) consecutive semiannual installments of rental (the "Fixed Rental"), payable in arrears, each in the amount equal to 4.214264% of the Purchase Price of the Equipment.

2.2. Adjustment of Rentals. In determining the amount of each installment of Fixed Rental payable pursuant to Section 2.1 hereof, the Lessor and the Lessee have assumed the following: (a) that on the Closing Date (as defined in the Purchase Order Assignment) the Lessor will sell notes (the "Notes") to Lutheran Brotherhood (the "Assignee") in order to finance a portion of the Purchase Price of the Equipment so that the Lessor shall not be required pursuant to the Purchase Order Assignment to pay the entire amount of the Purchase Price of the Equipment on the Closing Date; and (b) that under no circumstances will any Item of Equipment be delivered and accepted hereunder later than June 30, 1978. In the event that: (x) the Lessor shall fail to sell the Notes on the Closing Date and the Lessor shall thereby be required to pay the entire amount of the Purchase Price of Equipment then to be settled for; or (y) any Item of Equipment shall fail to be delivered and accepted hereunder on or prior to June 30, 1978, then

in either or both such events the Lessee and the Lessor agree that each of the unpaid installments of Fixed Rental and the Casualty Values (as defined in Section 11.6 hereof) shall be adjusted to an amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic yields and cash flows that would have been realized by the Lessor if neither of the conditions specified in clause (x) or (y) had occurred; provided that the Fixed Rental and the Casualty Values, as so adjusted, with respect to any Item of Equipment shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date under this Lease.

2.3. Rental Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The installments of Fixed Rental for each Item of Equipment shall be due and payable on January 3, 1979 and on the third day of each July and January thereafter to and including July 3, 1993. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Michigan are authorized or required to close.

2.4. Place of Rent Payment. The Lessor instructs the Lessee to make all payments due hereunder as follows:

(a) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof pursuant to Section 2.2 hereof shall be paid to the Lessor by bank wire transfer of Federal or other immediately available funds to Citibank, N.A., 55 Wall Street, New York, New York 10015, for the account of the Lessor, Account No. 3800 7152;

(b) The entire amount of the installment of Interim Rental and of the first through the nineteenth installments and the twenty-sixth through the thirtieth installments of Fixed Rental shall be paid to the Assignee by bank wire transfer of Federal or other immediately available funds to Northwestern National Bank of Minneapolis, Account No. 5526513, Trust Safekeeping Section, 7th Street and Marquette Avenue, Minneapolis, Minnesota 55480;

(c) Unless otherwise directed in writing by the Assignee, the portion of each of the twentieth

to and including the twenty-fifth installments of Fixed Rental which are equal to the percentage of the Purchase Price of the Equipment set forth opposite the number of such installments in the table below shall be paid to the Assignee by bank wire transfer of Federal or other immediately available funds to Northwestern National Bank of Minneapolis, Account No. 5526513, Trust Safekeeping Section, 7th Street and Marquette Avenue, Minneapolis, Minnesota 55480:

<u>Number of Fixed Rental Installment</u>	<u>Percentage of Purchase Price</u>
twentieth	3.978372%
twenty-first	3.978372%
twenty-second	3.028567%
twenty-third	3.028567%
twenty-fourth	2.636986%
twenty-fifth	2.636986%

(d) Unless otherwise directed in writing by the Assignee, the balance set forth in the table below of the twentieth through the twenty-fifth installments of Fixed Rental after wire transfer to the Assignee of the portion of each such installment designated in subparagraph (c) above shall be paid to the Lessor by bank wire transfer of Federal or other immediately available funds to Citibank, N.A., 55 Wall Street, New York, New York 10015, for the account of the Lessor, Account No. 3800 7152:

<u>Number of Fixed Rental Installment</u>	<u>Percentage of Purchase Price</u>
twentieth	0.235892%
twenty-first	0.235892%
twenty-second	1.185697%
twenty-third	1.185697%
twenty-fourth	1.577278%
twenty-fifth	1.577278%

(e) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Assignee by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to Consumers Power No. 78-1) and forwarded to the Assignee by United States

mail, first class, postage prepaid c/o Northwestern National Bank of Minneapolis, Account No. 5526513, Trust Safekeeping Section, 7th Street and Marquette Avenue, Minneapolis, Minnesota 55480;

(f) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 23.3 hereof shall be made directly to the party to receive the same, and any payments pursuant to Section 20 shall be made directly to the Lessor, in the case of all such payments without regard to the assignment of this Lease or the payments due hereunder to the Assignee as collateral security as hereinafter provided;

(g) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(h) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or the Assignee, in which case the Lessee shall reimburse the Lessor or the Assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and otherwise by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been provided in writing.

2.5. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof, nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from any cause whatsoever, or the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being

the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been stored by the Lessee for the Lessor for the full period therein provided or leaves the Lessee's lines for off-line delivery to the Lessor.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11 and 18 hereof, shall terminate on July 3, 1993.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its respective road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"OWNED BY AND LEASED FROM CONNELL LEASING,  
INC.; AND SUBJECT TO A SECURITY AGREEMENT  
FILED UNDER THE INTERSTATE COMMERCE ACT,  
SECTION 20c".

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT INCLUDING WITHOUT LIMITATION THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF (EXCEPT AS CONTEMPLATED BY SECTION 17 HEREOF), OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and the Assignee and their respective successors, agents and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission

of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

Nothing in this Section 6.1 shall be deemed to obligate the Lessee to pay the "Closing Expenses" of the Lessor described in Section 8 of the Note Agreement dated as of March 1, 1978 (the "Note Agreement") between the Lessor and the Assignee.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability. The indemnities and assumptions of liabilities set forth in this Section 6 do not constitute a guaranty of a residual value in the Equipment nor a guaranty of payment of the Notes.

## SECTION 7. RULES, LAWS AND REGULATIONS.

(a) The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In the event that such laws or rules require any alterations, replacement or addition of or to any part on any Item, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Assignee, adversely affect the property or rights of the Lessor or the Assignee under this Lease or under any security agreement executed pursuant to Section 16 hereof. In the event the Lessee shall make any alteration, replacement or addition to any Item pursuant to this Section 7(a) or shall make any addition, modification or improvement which is not readily removable without causing material damage to such Item and was installed or was added to such Item in contravention of

the agreement of the Lessee contained in Section 8(b)(1) hereof (any such addition, modification or improvement made pursuant to this Section 7(a) or in contravention of Section 8(b)(1) hereof being hereinafter called the "Alterations"), the Lessor agrees that it will, in its taxable year in which the Alterations are made, include the cost thereof in its gross income for Federal income tax purposes. The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made Alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, such Alterations and specifying the cost thereof with respect to each Item.

(b) The Lessee agrees to prepare and deliver to the Lessor and the Assignee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Assignee) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Assignee of the Items or the leasing thereof to the Lessee.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

(a) Items in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Item (including any parts installed on or replacements made to any Item and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

(b) Additions and Accessions. (1) Except as set forth in Sections 7(a) and 8(a) hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Items during the term of this Lease as are readily removable without causing material damage to the Items (and do not adversely and materially affect the value of the Items). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with the second paragraph hereof.

(ii) Any and all parts installed on and additions and replacements made to any Item (1) which are not readily removable without causing material damage to such Item and were installed or were added to such Item in contravention of its agreements contained in Section 8(b)(1) hereof, (2) the cost of which is included in the Purchase Price of such Item, (3) in the course of ordinary maintenance of the Items, or (4) which are required for the operation or use of such Item by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory



body, shall constitute accessions to such Item and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by any security agreement executed pursuant to Section 16 hereof) shall immediately be vested in the Lessor (subject to any security agreement executed pursuant to Section 16 hereof).

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable matter which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. Filing. The Lessee will, at its sole expense, cause this Lease, any security agreement and/or assignment, if any, executed by the Lessor with respect to any Item of Equipment or this Lease to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as shall be reasonably required by the Lessor for the protection of its title or the security interest of the Assignee to the satisfaction of the Lessor's and the Assignee's counsel and will furnish the Lessor and the Assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, the Equipment or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will upon the written request of the Lessor or the Assignee deliver to the Lessor and the Assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. State, Local and Foreign Tax Indemnification.

The Lessee hereby covenants and agrees for the benefit of the Lessor and the Assignee that all payments to be made by the Lessee under this Lease will be free of expense to the Lessor and the Assignee of collection or other charges and will be free of expense to the Lessor and the Assignee with respect to the amount of any local, state (including, without limitation, the Michigan Single Business Tax), Federal or foreign taxes (other than (a) any United States Federal income tax; (b) to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax payable by the Lessor in consequence of the receipt of payments provided herein; (c) the aggregate of all state and city income taxes, excess profits taxes and franchise taxes to the extent measured by gross receipts or net income based on such receipts or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state or city, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided; (d) any taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of creditors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Item or interest in rentals under the Lease; and (e) taxes which are imposed on or measured solely by the net income of the Lessor or the Assignee if and to the extent that such taxes are in substitution for or reduce the taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this Section 10.2, assessments, documentary stamp taxes, or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms of this Lease or the Purchase Order Assignment, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the other payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Item or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item free and clear of all impositions which might in any way affect the title or interest of the Lessor or result in a lien upon any such Item; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor. If any impositions shall have been charged or levied against the Lessor, the Lessee shall reimburse said party on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Assignee pursuant to Section 6 of the Note Agreement not covered by the foregoing paragraph of this Section 10.2, the Lessee shall pay to the Lessor any amounts which the Lessor may advance to fulfill completely its obligations pursuant to said Section 6.

In the event any reports with regard to impositions are required to be made on the basis of individual Items or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor or the Assignee in the Items as shall be satisfactory to the Lessor and the Assignee or, where not so permitted, will notify the Lessor and the Assignee of such requirement and within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Assignee. Notwithstanding the foregoing, the Lessee shall not be required to file Michigan Single Business Tax reports with respect to the interests in the Items of the Lessor or the Items, which shall be and remain the obligation of the Lessor. The Lessee shall be obligated to reimburse the Lessor for payment of such Tax; and the Lessor shall treat such reimbursement and all other rentals paid pursuant to this Lease as income to the extent such income is required to be included in its Michigan Single Business Tax returns.

In the event that, during the continuance of this Lease, any Tax accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

For purposes of this Section 10.2, the term "Lessor" shall include any member of an affiliated group, of which the Lessor is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

#### SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies in amounts and against risks customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee. Any such insurance may have applicable thereto deductible provisions similar to those maintained by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee and may

be carried under blanket policies maintained by the Lessee so long as such policy otherwise complies with the provisions of this Section 11.1. Property and liability insurance maintained pursuant hereto either shall contain a provision substantially to the effect that liability of the Lessee under agreements with any person, firm or corporation, whereby the Lessee has agreed to assume responsibility or liability for personal injuries or damage to property notwithstanding that claims may be made or suits commenced against such other person, firm or corporation, is covered under such policy, or shall name the Lessor, the Assignee and the Lessee as insureds and in the case of property insurance shall name the Lessor, the Lessee and the Assignee as insureds and shall provide that any payment thereunder for any loss or damage shall (except as provided below) be made to the Assignee under a standard mortgagee loss payable clause. All proceeds of property insurance received by the Lessor and the Assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and the Assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and the Assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence. The Lessee shall furnish the Assignee and the Lessor with satisfactory evidence of maintenance of the insurance required hereunder. The Lessee shall use its best efforts to provide or cause to be provided to the Lessor and the Assignee at least 30 days' prior written notice of the date on which any insurance maintained hereunder will be cancelled or of the date of expiration of any insurance maintained pursuant hereto which the Lessee has been unable to renew.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Assignee in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms hereof.

11.3. Payment for Casualty Loss. In the event of a Casualty Occurrence with respect to any Item of Equipment of

which the Lessee has knowledge prior to the Term Lease Commencement Date, the Lessee, on the Term Lease Commencement Date, shall pay to the Lessor a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment, plus the installment of Interim Rental due on such date. In the event of a Casualty Occurrence with respect to any Item of Equipment of which the Lessee has knowledge on or after the Term Lease Commencement Date, the Lessee, on the next succeeding Fixed Rental payment date, shall pay a sum equal to the Casualty Value, and the Fixed Rental installment due in respect of such Item of Equipment as of the date of such payment in accordance with the provisions of Section 2.4 hereof.

11.4. Rent Termination. Upon (and not until) payment of the Casualty Value and the Fixed Rental installment in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so in a commercially reasonable manner in its then existing condition and location without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment. It is understood and agreed that the Lessor shall not be liable to the Lessee for any costs or expenses incurred by the Lessee in connection with the sale or other disposition of any Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is required to be paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of the Equipment of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing throughout the term hereof and during any storage period provided in Sections 13 and 15 hereof until

payment of the Casualty Value and the Fixed Rental installment due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. Provided no Event of Default has occurred and is continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

## SECTION 12. FINANCIAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 31 in each year, commencing with the year 1979, the Lessee will furnish to the Lessor and any assignee pursuant to Section 16 hereof an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at its sole cost, liability and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or, as the case may be, such assignee, the existence and proper maintenance thereof during the continuance of this Lease.

12.3. Financial Reports. The Lessee agrees that it will furnish directly to the Lessee and any assignee pursuant to Section 16 hereof, the following:

(a) As soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Lessee as at the end of such period and a statement of income and retained earnings of the Lessee for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, the income statement setting forth the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting or financial officer or the controller of the Lessee;

(b) As soon as available and in any event within 120 days after the last day of each fiscal year, a copy of the Lessee's annual report to stockholders, including balance sheet, income statement and statement of retained earnings of the Lessee, which statements will have been certified by a firm of independent public accountants of recognized standing selected by the Lessee covering the operations of the Lessee;

(c) Within the period provided in subparagraph (b) above, a certificate, signed by any Vice President or the Treasurer of the Lessee, to the effect that the signer thereof has reviewed the terms and provisions of this Lease and that at the date of said certificate is not aware of any default in compliance by the Lessee with any of the covenants, terms and provisions of the Lease, or if the signer is aware of any such default, he shall disclose in such certificate the nature thereof;

(d) As soon as available, copies of such financial statements, reports and proxy statements as the Lessee shall furnish to its stockholders; and

(e) Such additional information as the Lessor and any such assignee may reasonably request concerning the Lessee, in order to enable such person to determine whether the covenants, terms and provisions of this Lease have been complied with by the Lessee.

The Lessee agrees to permit the Lessor and any such assignee (or such persons as the Lessor or such assignee may designate) to visit and inspect the Equipment and to examine the records or books of account of the Lessee relating to the Equipment, all at such reasonable times as the Lessor or such assignee may reasonably request.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, deliver possession of such Item of Equipment to the Lessor and transport the same to any connecting carrier for shipment, as directed by the Lessor upon not less than 30 days' written notice to the Lessee; provided, that the obligations of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. The Lessee covenants that, at the time any Item of Equipment is returned to the Lessor in the manner above provided, it will then be in compliance with all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment.

Without limiting the foregoing, the Lessee may become obligated to provide storage of such Equipment at the expiration of the original term or extended term, as the case may be, of this Lease upon the following terms and conditions. If the Lessee notifies the Lessor in writing pursuant to Section 18 hereof that it will not continue to lease the Equipment at the expiration of the original term or extended term of this Lease, as the case may be, prior to the 150th day next preceding the expiration of such Lease term, the Lessee shall not be obligated to provide storage of the Equipment for the Lessor. If the Lessee provides the Lessor with such written notification on or after the 150th day next preceding the expiration of such Lease term, the Lessee shall provide storage of the Equipment for a period of days not to exceed the difference between 150 and the number of days remaining in the original term or extended term of this Lease, as the case may be, when written notice of the Lessee's intent to no longer lease the Equipment hereunder is so provided. Any such storage shall be upon such storage tracks as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may reasonably select. All movement and storage (if any) of each such Item is to be at the risk and expense of the Lessee. During any such storage period (if any) the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any or of its employees or agents, such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage (if any) and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.



#### SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Sections 2 or 11 hereof and such default shall continue for ten calendar days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or the unauthorized possession of any Item of Equipment under this Lease; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Purchase Order Assignment and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by the Lessee herein or in the Purchase Order Assignment or in any statement or certificate furnished to the Lessor or any assignee pursuant to Section 16 hereof pursuant to or in connection with this Lease or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof; or

(e) The Lessee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property, or the Lessee shall make any voluntary assignment or transfer of the Lessee's interest as Lessee hereunder in a manner or to a person not permitted by the terms hereof; or

(f) A trustee or receiver is appointed for the Lessee, or for the major part of its property and is not discharged within 60 days after such appointment; or

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against the Lessee, and if instituted against the Lessee are allowed against the Lessee and are consented to or are not dismissed within 90 days after such institution.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, Fair Market Value for any Item of Equipment shall be determined in accordance with the

appraisal arrangements specified in Section 18.1(b) hereof and the Fair Market Value for any Item of Equipment shall be determined in accordance with similar appraisal arrangements with appropriate adjustment for sale instead of rental, with any appraisal expenses to be borne by the Lessee; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. Each Item of Equipment returned to the Lessor pursuant to this Section 15.1 shall (i) be in the same order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) meet all applicable standards of the Department of Transportation and shall comply with any applicable interchange rules of the Mechanical Division of the Association of American Railroads. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

- (a) Forthwith assemble and place such Equipment in such reasonable storage place as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place without charge for insurance, rent or storage for a period not exceeding 270 days and during such period of storage the Lessee shall continue to maintain the insurance required by Section 11.1 hereof; and

(c) Transport the Equipment to any connecting carrier for shipment, all as the Lessor may direct in writing.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinabove provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

#### SECTION 16. ASSIGNMENTS BY LESSOR.

The Lessee and the Lessor hereby confirm that, concurrently with the execution and delivery of this Lease, the Lessor has executed and delivered to the Assignee a Security Agreement dated as of March 1, 1978 (the "Security Agreement") which assigns and grants a security interest to the Assignee in, to and under this Lease and certain of the rentals and other amounts payable hereunder, all as more explicitly set forth in Section 1 of the Security Agreement. The Lessee hereby agrees that the sums payable by the Lessee hereunder which have been assigned to the Assignee under the Security Agreement shall be paid to or upon the written order of the Assignee; provided that until receipt of any such written order the Lessee may make all such payments in accordance with the provisions of Section 2.4 hereof. Without limiting the foregoing, the Lessee further acknowledges and agrees that (a) the rights of the Assignee in and to the sums payable under this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any

damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the rents and other sums which are the subject matter of the assignment, and (b) the Assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the lessor for the use and benefit of the Assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

It is understood and agreed that the right, title and interest of the Assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

#### SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor and any assignee pursuant to Section 16 hereof, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment, provided, however, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of the Lessee under this Lease by reason of the existence of an after-acquired property clause in any mortgage to which the Lessee is a party covering substantially all of its utility property. The Lessee shall not, without the prior written consent of the Lessor and the Assignee, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Assignments and Subleases by Lessee; Interchange; "Mileage". Provided that no Event of Default (or event which with the lapse of time or giving of notice, or both, would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to and shall have the use and possession and quiet enjoyment of the Equipment. The Lessee agrees that the Equipment will be used predominantly in unit train and/or trainload service within the continental limits of the United States of America excluding Alaska. The Lessee agrees that it will not, without the prior written consent of the Lessor and any assignee pursuant to Section 16 hereof, which consent shall not be unreasonably withheld, assign this Lease or any of its

rights hereunder or sublease any Item of Equipment; provided, however, that such consent shall not be required for (i) the sublease of any Item of Equipment to an affiliate (as hereinafter defined) of the lessee, provided that each such sublease shall be made expressly subject and subordinate to this lease; (ii) the use of any Item of Equipment by Lessee's suppliers, customers and consignees of goods being shipped or by others in the usual interchange of traffic; or (iii) the sublease of any Item of Equipment to any person, firm or corporation other than an affiliate of the lessee for a term not exceeding one year, provided that the lessee shall promptly give written notice of any such sublease to the lessor and any assignee pursuant to Section 16, hereof, and furnish to the lessor and the Assignee such information concerning such sublease and the sublessee as the lessor and the Assignee may reasonably request and each such sublease shall be made expressly subject and subordinate to this lease. No such assignment, sublease or permitted use shall relieve the lessee of any of its obligations, liabilities or duties hereunder which shall be and remain those of a principal and not a surety.

For purposes of this Section 17.2, the term "affiliate" shall mean any subsidiary of the lessee or any corporation or other person reported in the published financial statements of the lessee on an equity in net assets basis in accordance with generally accepted accounting principles.

The Lessee may receive and retain for its own account such compensation for assignment or subletting the Equipment and/or for use of the Equipment by others as the Lessee may determine. Without limiting the foregoing, it is contemplated that the lessee shall receive insofar as applicable law and regulations allow, all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of the Equipment and if for any reason the lessor shall receive any Mileage then (unless an Event of Default shall have occurred and be continuing, in which event such Mileage or portion thereof shall be retained by the lessor until such Event of Default shall no longer be continuing) the lessor shall remit such Mileage to the lessee promptly after the lessee shall furnish to the lessor, at the lessee's sole expense, either (a) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the lessee will not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (b) an opinion of counsel to the same effect.

17.3. Merger, Consolidation or Acquisition of Lessee.  
Nothing in this Section 17 shall be deemed to restrict the right of the lessee to assign or transfer its leasehold interest under this lease in the Equipment or possession of the Equipment to any solvent corporation (which shall have duly assumed in writing satisfactory to the lessor the obligations hereunder of the

Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RENEWAL OPTIONS; AND RIGHT OF FIRST REFUSAL.

18.1. Renewal Options. Provided that the Lessee is not in default hereunder, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for two (2) additional renewal terms of three years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the semiannual Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the applicable renewal term, then the term "Appraiser" shall mean an appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. Upon receipt of notice of

such determination, the Lessor and Lessee shall have the option to enter or not enter into such renewal; however, in the event they elect to enter into the renewal, the appraiser's determination of such Fair Rental Value shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.2. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and subject always to the rights of the Lessee under Section 18.1 hereof, in the event the Lessor elects to sell any Items to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Lessor shall receive, prior to removal of the Items at the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Items and the Lessor elects to sell the Items pursuant to such offer at the expiration of such term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Lessor. The Lessee shall have the sole right and option to purchase the Items for cash at the price at which the Items are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Lessor, the Lessee shall exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (a) 15 days after the date of delivery of such notice by the Lessee to the Lessor or (b) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Items, this lease, (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

It is understood and agreed by the Lessor and the Lessee that in the event the Lessor elects to lease rather than sell the Items to third parties at the expiration of the original or extended term of this Lease, as the case may be, the Lessee shall have no right of first refusal hereunder to purchase said Items.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.



SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 10% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. FEDERAL INCOME TAX INDEMNIFICATION.

(a) Intended Federal Tax Benefits. In entering into the Note Agreement and the transaction contemplated thereby, it is the intention of the Lessor and the Lessee that such transaction will result in making available to the Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for Federal income tax:

(1) This Lease constitutes a lease;

(ii) The Lessor is the lessor and the Lessee is the lessee under this Lease;

(iii) The Lessor is entitled to deduct the interest (the "Interest Deduction") payable by the Lessor in respect of the Notes issued by the Lessor under and pursuant to the Note Agreement in computing the Lessor's taxable income;

(iv) The entire Purchase Price of the Items qualifies for the full 10% investment tax credit (the "Investment Credit") allowed under Section 38 and related Sections of the Internal Revenue Code of 1954, as amended (the "Code");

(v) In computing its taxable net income, the Lessor is entitled to (x) depreciate the Items using the double-declining balance method of depreciation authorized by Section 167(b)(2) of the Code over an "asset depreciation range" of twelve years from the date of acceptance under this Lease of each Item, for an asset described in Asset Guideline Class No. 00.25 as described in Rev. Proc. 77-10; (y) without the prior consent of the Commissioner, switch to the sum-of-the-years digits method of depreciation authorized by Section 167(b)(3) of the Code when most beneficial to the Lessor in accordance with Regulation §1.167(a)-11(c)(1)(iii); and (z) adopt the half-year convention described in Regulation §1.167(a)-11(c)(2)(iii) in accordance with Section 167(m) of the Code;

(vi) The Items may be so depreciated to an estimated gross salvage value of 10% of the Purchase Price of the Items which will be reduced by 10% of the Purchase Price of such Items as provided in Section 167(f) of the Code (subsections (v) and (vi) collectively are the "Depreciation Deduction");

(vii) All amounts includible in gross income by the Lessor with respect to this Lease will be treated as income derived from or allocable to sources within the United States.

(b) Federal Income Tax Indemnification. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the original term of this Lease or any extended term thereof take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits except that the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, the de minimis use of the Items outside the United States and that each of such corporations will file such returns, take such action and execute such documents, and keep and make available for inspection and copying by the Lessor such records (other than the Lessee's corporate income tax returns), as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee further agrees that by not later than the date of the Closing Date under the Note Agreement, it will deliver, or cause to be delivered, to the Lessor an opinion, addressed to the Lessor, of an appropriate representative selected by the Lessee, satisfactory in form and substance to the Lessor, that the Items will have a useful life of at least 19.5 years, that the Items will have a fair market value at the end of the original term of this Lease of at least 20 percent of the Purchase Price thereof without including in such value any increase or decrease for inflation or deflation during the term of the Lease and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Equipment to the Lessor at the end of the primary term of this Lease and that at the expiration of such term of the lease the Items will have a commercially feasible use to the Lessor and other potential users within the meaning of Rev. Proc. 76-30.

The Lessee represents and warrants that (i) no portion of the Items constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Items, the entire Purchase Price of the Items will qualify as "new Section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Items, the

Items will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Items, no investment credit, depreciation or other tax benefits will have been claimed by the Lessee with respect thereto; (v) at all times during the term of this Lease, the Items will constitute "Section 38 property" within the meaning of Section 48(a) of the Code as in effect on the date hereof; and (vi) the Lessee will not claim that it is the owner of the Items at any time prior to the exercise by the Lessee of any option granted to the Lessee under this Lease to purchase the Items.

If the Lessor shall lose, or shall not have, or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Tax Benefits with respect to all or part of any Item due to (A) the sale or other disposition of any Item or the interest of the Lessor therein after the occurrence of an Event of Default under the Lease, (B) an amendment to the tax law (including, without limitation, any change in the income tax rates under Federal or any applicable state law from those in effect on March 1, 1978) which is adopted on or prior to April 30, 1978, (C) an amendment to the tax law (including, without limitation, any change to the income tax rates under Federal or any applicable state law from those in effect on March 1, 1978) which is adopted subsequent to April 30, 1978 if the effective date thereof shall be on or prior to April 30, 1978, (D) the incorrectness of any representation or warranty made by the Lessee (including, without limitation, those made in the preceding paragraph of this Section 20(b), or the breach by the Lessee of any of its agreements hereunder, or any intentional misrepresentation of any statement made in the opinion delivered pursuant to the second paragraph of this Section 20(b), then in any such case the Lessee shall pay to the Lessor (i) on the first date provided in this Lease for the payment of installments of rental thereunder after the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided in the eighth and ninth paragraphs of this Section 20(b), an amount equal to the sum of the Tax Payment (as hereinafter defined) made by the Lessor plus all interest and penalties paid by the Lessor with respect to the Tax Payment (plus an additional amount sufficient to pay the income tax of the Lessor resulting from the reimbursement of the Tax Payment and any such penalty) (the "Lump Sum Payment") and (ii) on each of the dates provided in this Lease for payment of the installments of rental hereunder commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all income taxes required to be paid by the Lessor on the receipt of such sums under the laws of the United States or any political subdivision thereof), when taken together with the portion of the rental installments due on such dates under this Lease which are to be distributed to the Lessor,

will, in the reasonable opinion of the lessor, maintain the lessor's after-tax return on and rate of recovery of investment and sum of the annual net cash flows (computed on the same assumptions as utilized by the lessor in originally evaluating this transaction) in respect of such Item hereunder and under this lease at the same level that would have been available if the lessor had been entitled to utilization of all of such Tax Benefits. In the event that this lease is terminated with respect to any Item prior to the time the lessee is obligated to make payments with respect to such Item to the lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the lessee shall pay to the lessor, in lieu of such payment or payments on or before 30 days after the liability of the lessee in respect of such termination and hereunder shall become fixed as in this lease and hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of the lessor to maintain the lessor's after-tax return on and rate of recovery of investment and the sum of the annual net cash flows (computed on the same assumptions as utilized by the lessor in originally evaluating this transaction) in respect of such Item hereunder and under this lease at the same level that would have been available if the lessor had been entitled to utilization of all such Tax Benefits.

If any income or deduction with respect to the Items shall not be treated as derived from, or allocated to, sources within the United States in the lessor's Federal income tax return for a given year, then the lessee shall pay to the lessor on the first day thereafter provided for in this lease for the payment of installments of rental hereunder, an amount equal to the foreign tax credits which the lessor would have been entitled to with respect to such taxable year if the lessor had not participated in the transactions contemplated by this lease, provided that such payment shall be limited to the proportionate share of such credits which is directly attributable to the lessee's use of such Items outside of the United States. The lessee will maintain sufficient records to verify its use of the Items outside of the United States, which use shall be de minimis, and the lessee shall furnish such records to the lessor for Federal income tax audit purposes upon receipt of 30 days' written notice.

The lessee acknowledges that the Schedule of Casualty Value attached as Schedule C to this lease has been computed on the assumption that the lessor shall be entitled to all such Tax Benefits. Accordingly, in the event the lessee becomes obligated under the provisions of this lease to pay additional sums to the lessor pursuant to this Section 20(b), the said Schedule of Casualty

Value shall be revised as may be necessary in the reasonable opinion of the Lessor so that the amount payable by the Lessee in connection with any Casualty Occurrence shall be sufficient to maintain the Lessor's after-tax return on and rate of recovery of investment and the sum of the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) at the same level that would have been available to the Lessor upon payment of Casualty Value had the Tax Benefits been allowed in full; provided, that the Casualty Values under the Lease shall in no event be reduced below amounts required (when taken together with rentals then payable) to discharge the full unpaid principal amount of the Notes (as defined in the Note Agreement) and interest accrued thereon to the date on which any Casualty Value shall be due and payable under the Lease. The revised Schedule of Casualty Value shall be applied to any payment of Casualty Value paid after the liability of the Lessee hereunder shall become fixed as hereinafter provided regardless of the date of the Casualty Occurrence. Furthermore, with respect to any previous payment of Casualty Value under this Lease by the Lessee after a Casualty Occurrence but prior to the aforementioned revision of the Casualty Value with respect to such Item, the Lessee shall pay to the Lessor, in a lump sum, the additional amount, in excess of the Casualty Value actually paid, that the Lessee would have been required to pay had the liability of the Lessee hereunder become fixed prior to the date of the original payment, and the Schedule of Casualty Value had, accordingly, been revised as above provided.

Anything in the fourth paragraph of this Section 20(b) to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for herein if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Tax Benefits with respect to all or part of any Item to which it would otherwise have been entitled if such Tax Benefits would otherwise have been lost because one or more of the following events has occurred (hereinafter called "Excluded Events"):

(i) a Casualty Occurrence with respect to such Item, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 11.3 of this Lease, as the same may be revised pursuant to the preceding paragraph;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Item or the voluntary reduction by the Lessor of its interest in the rentals from such Item under the Lease (except pursuant to any assignment thereof to the Assignee as security) or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor (whether voluntary or involuntary) of any interest

in such Item or in the rentals therefor under the Lease unless, in each case, an Event of Default under the Lease shall then have occurred and be continuing;

(iii) the failure of the Lessor to timely claim the Investment Credit, the Depreciation Deduction or the Interest Deduction, as applicable, in its Federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Tax Benefits; or

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit the Investment Credit or sufficient income to benefit from the Depreciation Deduction or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of the Lessee's tax counsel or in the event the opinion of such counsel is not acceptable to the Lessor, independent counsel who is acceptable to the Lessor selected by the Lessee (herein referred to as "Counsel") a bona fide claim to all or a portion of the Tax Benefits with respect to any Item exists in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessor, in its sole judgment, shall select; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless it has received an opinion from such Counsel, selected by the Lessee and acceptable to the Lessor, that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Tax Benefits with respect to any Item (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided, that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such cases, if the Final Determination (as such term is defined in the next succeeding paragraph hereof) shall be adverse to the Lessor the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination and the Lessee shall on the rental payment date under the Lease next succeeding such Final Determination (i) pay to the Lessor the amount of the Lump Sum Payment (as previously defined) plus interest thereon from the date such payments are made by the Lessor to the date the Lessee reimburses the Lessor therefor at the rate of interest charged by First National City Bank, New York, New York, to its prime commercial customers on short-term unsecured borrowings (the "Prime Rate") in effect on the date of such Final Determination: and (ii)

commence payment of the balance of the sums payable pursuant to the fourth paragraph of this Section 20(b). If the Lessor makes such Tax Payment prior to contesting the matter and then either sues for a refund or does not contest such Tax Payment because the Lessee has not requested the Lessor to do so in accordance with the terms of this paragraph, the Lessee shall on the first rental payment date under the Lease after such Tax Payment (i) pay to the Lessor the amount of the Lump Sum Payment (as previously defined) plus interest thereon from the date such payments are made by the Lessor to the date the Lessee reimburses the Lessor thereof at the Prime Rate in effect on the date of such Final Determination; and (ii) commence payment of the balance of the sums payable pursuant to the fourth paragraph of this Section 20(b). If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Owner pays to the Lessee (x) an amount equal to the sums theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the interest rate then being paid on tax over-payments by the United States for the period from the date such sums were paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof; and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

"Final Determination" for the purpose of this Lease, means a final decision of a Court of competent jurisdiction after all allowable appeals requested by the Lessee pursuant to the preceding paragraph (other than an appeal or petition for certiorari to the Supreme Court of the United States unless the Lessor elects to file such appeal or petition) have been exhausted by either party to the action. Neither concession by the Lessor of any of the aforementioned Tax Benefits in the overall settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level nor the failure to recover a refund in whole or in part with respect to the disallowance of such Tax Benefit which is the result of a setoff against a claim for refund based upon the loss of such Tax Benefits where the matters set off do not relate to such Tax Benefits will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to the Lessor.

(c) Payment Adjustment for Lessee's Capital Expenditures. In the Event that the Lessee shall be required pursuant to Section 7 of this Lease to make any improvement and/or addition to an Item at its own expense, or in the event the Lessee shall make any improvement and/or addition to any Item which is not readily removable without causing material damage to such Item, which improvement and/or addition was made in contravention of the agreement of the Lessee contained in Section 8(b)(1) of this Lease (any such improvement and/or addition made pursuant to Section 7 or in contravention of Section 8(b)(1) of this Lease being hereinafter called the "Alterations"), then under and pursuant to the terms of Section 7 of this Lease, the Lessor and the Lessee have agreed that the cost thereof will be treated as income to the Lessor for Federal income tax purposes. In such event, the Lessee hereby agrees that it will pay to the Lessor on each of the dates provided in this Lease for payment of the installments of rental hereunder in respect of such Item commencing with the first such date following the date on which the Lessee is required to furnish written notice of such inclusion to the Lessor pursuant to the next following paragraph, such sums which (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof), when taken together with the rental installments due on such dates under this Lease in respect of such Item, will, in the reasonable opinion of the Lessor, maintain the after-tax return on and rate of recovery of investment and the sum of the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item hereunder and under this Lease at the same level that would have been available if the cost of such Alterations had not been treated as income to the Lessor.

The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made Alterations, the cost of which is to be treated as income to the Lessor for Federal income tax purposes pursuant to Section 7 of this Lease, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, such Alterations and specifying the cost thereof with respect to each Item.

(d) Lessor Representation. The Lessor represents and warrants that it has not and has not agreed to pay a fee to anyone based upon the residual value of the Items.

(e) Consolidated Tax Returns. For purposes of this Section 20, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.



SECTION 21. LESSEE'S REPRESENTATIONS AND WARRANTIES; SURVIVAL.

21.1. Representations and Warranties. The Lessee represents and warrants as of the date of execution hereof:

(a) The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan; has all requisite power and authority to own and operate its properties and to carry on its business as now conducted; and, except as disclosed in the financial statements referred to in paragraph (b) of this Section 21.1, in the Prospectus dated March 30, 1978 (the "Prospectus") of the Lessee, and the Letter dated April 13, 1978 (the "Counsel's Letter") of counsel for the Lessee heretofore furnished to the Lessor, the Lessee has all material licenses and permits necessary to carry on its business as now conducted. The Lessee is duly licensed or qualified and is in good standing in each jurisdiction in which such qualification is necessary to carry out the terms of the Purchase Order Assignment and this Lease;

(b) (i) The balance sheet of the Lessee as of December 31, 1977 and the statement of income and retained earnings for the fiscal year ended on said date prepared and certified by Arthur Andersen & Co. have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of the Lessee as of such date and the results of operations of the Lessee for such period;

(ii) Since December 31, 1977, there has been no material adverse change in the condition, financial or otherwise, of the Lessee as shown on the balance sheet as of such date except changes in the ordinary course of business and except as disclosed in the Prospectus and in the Counsel's Letter;

(c) The financial statements referred to in paragraph (b) of this Section 21.1, the Prospectus and the Counsel's Letter do not, nor does any written statement furnished by the Lessee to you in connection with the negotiation of this Lease, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact peculiar to the Lessee which the Lessee has not disclosed to the Lessor or any assignee pursuant to Section 16 hereof in writing which materially affects adversely nor, to the best of its knowledge, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Lessee;

(d) There are no proceedings pending or, to the knowledge of the Lessee threatened, against or affecting the Lessee or any subsidiary in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the Lessee's ability to perform its obligations under the Purchase Order Assignment or this Lease,

except as disclosed in the financial statements referred to in paragraph (b) of this Section 21.1, in the Prospectus and in the Counsel's Letter. Neither the Lessee nor any subsidiary is in default with respect to any order of any court or governmental authority or arbitration board or tribunal, the violation of which will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Lessee;

(e) The execution and delivery by the Lessee of the Purchase Order Assignment and this Lease and compliance by the Lessee with all of the provisions of said instruments:

(i) are within the corporate powers of the Lessee; and

(ii) will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the Articles of Incorporation or By-Laws of the Lessee or any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of the Lessee;

(f) No Event of Default has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as herein defined. The Lessee is not in default in the payment of principal or interest on any indebtedness for borrowed money and is not in default in any material respect under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been issued and no event has occurred and is continuing under any material provision of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder;

(g) No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local, including, without limitation, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, the Securities and Exchange Commission and the Michigan Public Service Commission, is necessary in connection with the execution and delivery by the Lessee of the Purchase Order Assignment or this Lease or compliance by the Lessee with any of the provisions of any of said instruments, and the Lessee has complied with any applicable provisions of law requiring the designation, declaration, filing, registration and/or qualification with any governmental authority in connection with the execution and delivery of said instruments;

(h) All foreign, Federal, state and local tax returns required to be filed by the Lessee have, in fact, been filed, and all taxes which are shown to be due and payable in such returns have been paid. No controversy in respect of additional taxes due is pending or, to the knowledge of the Lessee, threatened which, if adversely determined, would materially and adversely affect the Lessee's ability to perform its obligations under the Purchase Order Assignment or this Lease. The provision for taxes on the books of the Lessee is adequate for all open years, and for its current fiscal period;

(i) The Equipment is covered by the insurance required by Section 11 of this Lease and all premiums due on or prior to the date hereof in respect of such insurance have been paid in full;

(j) (1) The Lessee warrants and represents to any assignee pursuant to Section 16 hereof that:

(x) neither the Lessee nor any of its agents has offered the ownership interest in the Equipment (the "Ownership Interest") or any similar security for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any prospective purchaser, other than the Lessor and eight other institutional investors, each of whom was offered the Ownership Interest at private sale for investment; and

(y) neither the Lessee nor any of its agents has offered any Notes or any similar securities for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, more than twelve institutional investors, and any such Notes or any similar securities, if offered, were offered at private sale for investment.

(ii) The Lessee agrees that neither the Lessee nor any Person acting on behalf of the Lessee will offer:

(x) the Ownership Interest or any part thereof or any similar security for issue or sale to, or solicit any offer to acquire any of the Ownership

Interest from, anyone so as to bring the issuance and sale of the Ownership Interest or any part thereof within the provisions of Section 5 of the Securities Act of 1933, as amended; or

(y) such notes or any part thereof or any similar security for issue or sale to, or solicit any offer to acquire any of such notes from, anyone so as to bring the issuance and sale of such notes or any part thereof within the provisions of Section 5 of the Securities Act of 1933, as amended.

Nothing contained in this Section 21(j) shall be deemed to constitute an acknowledgment or agreement by any party hereto that the Ownership Interest or any such similar security constitutes a "security" within the meaning of Section 2(1) of the Securities Act of 1933, as amended, or within the meaning of any applicable state law regulating the offer, issuance or sale of securities.

(k) The Lessee owns or possesses all patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights necessary to the conduct of the Lessee's business as presently operated, without any known conflict with the rights of others which might result in a material adverse change in the business of the Lessee;

(l) The Lessee represents that it is not entering into the Purchase Order Assignment, this Lease or any other transaction contemplated thereby, directly or indirectly, in connection with any arrangement or understanding in any way involving any employee benefit plan or related trust (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of ERISA and the Code.

21.2. Survival. The issuance and delivery of the Notes and the advance of funds by the Lessor are being made in reliance on the representations and warranties contained in this Section 21 and said representations and warranties shall survive the execution and delivery of this Lease, said issuance and delivery of the Notes and said advance of funds by the Lessor and are expressly made for the benefit of, shall be enforceable by, and shall inure to the benefit of Lessor and its successors and assigns.

## SECTION 22. OPINION OF LESSEE'S COUNSEL.

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will delivery to the Lessor four counterparts of the written opinion of counsel for the Lessee addressed to the Lessor and any assignee pursuant to Section 16 hereof, in scope, form and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation duly organized, legally existing and in good standing under the laws of the State of Michigan and has full right, power and authority to carry on its business and own its property, to enter into, execute and deliver the Purchase Order Assignment and this Lease and to perform each and all matters and things required to be observed or performed by the Lessee thereunder and hereunder;

(b) The Purchase Order Assignment and this Lease have been duly authorized by all necessary corporate action on the part of the Lessee and have been duly executed and delivered by the Lessee and constitute the legal, valid and binding contracts and agreements of the Lessee enforceable in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(c) No consent, approval or authorization of any governmental authority, including, without limitation, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, the Securities and Exchange Commission and the Michigan Public Service Commission, is required on the part of the Lessee in connection with the execution and delivery of the Purchase Order Assignment or this Lease, and the Lessee has complied with any applicable provisions of law requiring the designation, declaration, filing, registration and/or qualification with any governmental authority in connection with the execution and delivery of said instruments;

(d) The Lessee is duly authorized to conduct its business in each jurisdiction in which it operates and has duly qualified and is in good standing in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary;

(e) The execution and delivery by the Lessee of the Purchase Order Assignment and this Lease and compliance by the Lessee with all of the provisions of the same will not conflict with nor result in any breach of any of the provisions of, or constitute a default under, or result in the creation of any lien upon any property of the Lessee or any subsidiary of the Lessee under the provisions of the articles of incorporation or by-laws of the Lessee or of any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound. Without limiting the foregoing, no mortgage, deed of trust or other

lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest of the Lessee, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor or any assignee pursuant to Section 16 hereof; provided, however, that such liens may attach to the rights of the Lessee under this Lease in and to the Equipment; and

(f) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary to protect the rights, title and interest of the Lessor in and to the Equipment.

### SECTION 23. MISCELLANEOUS.

23.1. Limitations of Liability. (a) It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns, anything herein to the contrary notwithstanding, that no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against the Lessor, or any incorporator or any past, present or future subscriber to the capital stock of, the Lessor, or any incorporator or any past, present or future subscriber to the capital stock of, the Lessor, on account of this Lease or on account of any representation, covenant undertaking or agreement of the Lessor in this Lease contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Equipment for satisfaction of the same.

(b) It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by the Lessee in its corporate capacity and that nothing herein contained shall be construed as creating any liability on any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Lessee to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the Lessor and by each and every person now or hereafter claiming by, through or under the Lessor.

23.2. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: Connell Leasing Company, A Division  
of Connell Rice & Sugar Co., Inc.  
45 Cardinal Drive  
Westfield, New Jersey 07092

Attention: Grover Connell  
President

If to the Lessee: Consumers Power Company  
212 West Michigan Avenue  
Jackson, Michigan 49201

Attention: Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, the lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as additional rent hereunder, with interest at the rate of 10% per annum.

23.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

23.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

23.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this lease.

23.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.


IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

CONNELL LEASING COMPANY,  
A DIVISION OF CONNELL  
RICE & SUGAR CO., INC.

[CORPORATE SEAL]

ATTEST:

  
Secretary

By   
Its President

[CORPORATE SEAL]

ATTEST:

  
Assistant Secretary

CONSUMERS POWER COMPANY

By   
Its Vice President

APPROVED AS TO FORM

  
CONSUMERS POWER COMPANY  
LEGAL DEPARTMENT

OK CLB

4/19/78

OK W. J. [Signature]  
4/19/78



STATE OF NEW JERSEY    )  
                                  ) SS  
COUNTY OF UNION        )

On this 19<sup>th</sup> day of April, 1978, before me personally appeared James Connell, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ President of CONNELL LEASING COMPANY, A DIVISION OF CONNELL RICE & SUGAR CO., INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia Anter  
Notary Public

[NOTARIAL SEAL]

My commission expires:

VIRGINIA ANTER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires April 22, 1979

STATE OF MICHIGAN    )  
                                  ) SS  
COUNTY OF JACKSON    )

On this 18<sup>th</sup> day of April, 1978, before me personally appeared R.J. Odlevak, to me personally known, who being by me duly sworn, says that he is the Vice President of CONSUMERS POWER COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Beverly A. Avery Beverly A. Avery  
Notary Public

[NOTARIAL SEAL]

My commission expires: March 14, 1981

DESCRIPTION OF ITEMS OF EQUIPMENT

MANUFACTURER: Thrall Car Manufacturing Company

PLANT OF MANUFACTURER: Chicago Heights, Illinois

DESCRIPTION OF EQUIPMENT: 110 one hundred ton, 4000  
cubic foot high side steel  
gondola cars with swivel couplers  
bearing road numbers  
CPOX 1000 to CPOX 1109, both  
inclusive

SPECIFICATIONS: GN-100-46-183-REV-A

PURCHASE PRICE: \$32,188.06 per Item (\$3,540,686.60  
for 110 Items)

DELIVERY TO: Consumers Power Company

PLACE OF DELIVERY: Covington, Kentucky

ESTIMATED DELIVERY DATE: April - May, 1978

OUTSIDE DELIVERY DATE: June 30 1978

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: Connell Leasing Company, A Division of Connell Rice &  
Sugar Co., Inc.

Thrall Car Manufacturing Company (the "Manufacturer")

I, a duly appointed and authorized representative of  
CONSUMERS POWER COMPANY (the "lessee") under the Equipment Lease  
dated as of March 1, 1978 between the lessor and the lessee,  
do hereby certify that I have inspected, received, approved  
and accepted delivery under the Lease of the following Items  
of Equipment:

TYPE OF EQUIPMENT: 100-ton, 4000 cubic foot high side  
steel gondola cars with swivel couplers

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment  
are in good order and condition, and appear to conform to the  
Specifications applicable thereto, that the lessee has no knowledge  
of any defect in any of the foregoing Items of Equipment with  
respect to design, manufacture, condition or in any other  
respect, and that each Item has been labeled by means of a plate  
or a stencil printed in contrasting colors upon each side of the  
Item in letters not less than one inch in height as follows:

"OWNED BY AND LEASED FROM CONNELL LEASING, INC.;  
AND SUBJECT TO A SECURITY AGREEMENT FILED UNDER  
THE INTERSTATE COMMERCE ACT, SECTION 20c".

The execution of this Certificate will in no way relieve  
or decrease the responsibility of the Manufacturer of the Equipment  
for warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 1978.

(Consumers Power  
No. 78-1)

  
\_\_\_\_\_  
Inspector and Authorized Representative  
of Consumers Power Company

CONSUMERS POWER COMPANY

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite the dates in the following schedule:

<u>Fixed Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Purchase Price (as defined in the Participation Agreement) Payable as Casualty Value</u>
July 3, 1978	108.59731%
January 3, 1979	108.87338%
July 3, 1979	107.99918%
January 3, 1980	107.71951%
July 3, 1980	106.68760%
January 3, 1981	105.92891%
July 3, 1981	104.75748%
January 3, 1982	97.13141%
July 3, 1982	95.69178%
January 3, 1983	94.19576%
July 3, 1983	92.60448%
January 3, 1984	84.30487%
July 3, 1984	82.43896%
January 3, 1985	80.37926%
July 3, 1985	78.38079%
January 3, 1986	69.59204%
July 3, 1986	67.33988%
January 3, 1987	64.85590%
July 3, 1987	62.43611%
January 3, 1988	59.71072%
July 3, 1988	57.10812%
January 3, 1989	54.16259%
July 3, 1989	51.36908%
January 3, 1990	48.24422%
July 3, 1990	45.28151%
January 3, 1991	42.01807%
July 3, 1991	38.89250%
January 3, 1992	35.46934%
July 3, 1992	32.11514%
January 3, 1993	28.53901%
July 3, 1993	25.00000%

(Consumers Power  
No. 78-1)

SCHEDULE C  
(to Equipment Lease)